IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.441 OF 2003

Regional Director Employees' State Corporation, Mumbai ...Applicant
Vs.
Sujata S. Shetty & Anr. ...Respondents

Shri. H.V.Mehta for the Applicant.
Ms Nilambair Jadha i/by Mr. Rajesh Maravoor for the Respondent No.1.
Ms M.M.Deshmukh, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : AUGUST 05, 2005.

P.C.:

1. On 12th July, 2005, this Application was finally heard. After the submissions of both the sides were fully heard, the learned Counsel appearing for the Respondent Nos.1 and 2 stated that if further time of two weeks is given to the Respondent Nos.1 and 2, they will try to submit the record in terms of notice dated 25th September, 2002. In view of the said submission, dictation of the order was postponed for a period of two weeks. In order dated 12th July, 2005, it was specifically recorded that no further arguments will be heard.

2. On 03rd August, 2005 when the matter was called out, none appeared for the Respondent Nos.1 and 2. Today, when matter is called out, Shri. Mehta appearing for the Applicant states that the Respondent Nos.1 and 2 have not submitted the entire record in terms of notice dated 25th September, 2002. The said statement is disputed by the learned Counsel appearing

for the Respondent Nos.1 and 2 by contending that inspection of the relevant documents have been given to the concerned authorities. However, this court cannot enter into the dispute whether inspection of the documents is given or not. The fact remains that the documents are not submitted as per the requirement of the notice dated 25th September, 2002. In the circumstances, Revision Application will have to be decided on merits.

3 The order impugned is dated 04th January, 2003 by which complaint filed by the Applicant was dismissed for default. The complaint was filed for offence under section 85(g) of the Employees State Insurance Act, 1948 which is punishable under section 85(ii)(a) of the said Act, 1948.

4. The learned counsel for the Applicant submitted that the complainant cannot be blamed if service report of the summons was not submitted. He submitted that the complainant was a statutory corporation and therefore, when representative of the Applicant was absent, complaint ought not to have been dismissed.

5. The learned Counsel for the Respondent Nos.1 and 2 submitted that it was for the complainant to ensure that service of summons was effected and

therefore, there is nothing wrong with the impugned order.

6. I have considered the rival submissions. The complaint was filed by a Statutory Corporation incorporated under the provisions of the said Act of 1948. It is true that on the date on which the complaint was before the learned Magistrate, no one was present on behalf of the Applicant. However, that is not only reason why complaint is dismissed. The other reason is that the report was not submitted of the service of summons to the accused. Considering the facts and circumstances of the case, in my view, one opportunity deserves to be granted to the complainant to prosecute the complaint and accordingly, complaint deserves to be restored. The Respondent Nos.1 and 2 can be always compensated by ordering payment of costs.

6. Hence, I pass the following order:

: O R D E R :

i) Rule is made absolute in terms of paryer clause (a).

ii) The Applicant is directed to pay costs of Rs.1,500/- each to the Respondent Nos.1 and 2 within a

period of four weeks from today.

JUDGE